



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

Docket No. SSA-2011-0099

RIN 0960-AH44

Obtaining Evidence beyond the Current “Special Arrangement Sources”

AGENCY: Social Security Administration (SSA).

ACTION: Interim final rules with request for comments.

SUMMARY: We are amending our regulations to state that we will obtain evidence from any appropriate source. Our current regulations provide that we will obtain information from “special arrangement sources” for those infrequent situations when we are in a better position than our State agency partners to obtain evidence. Due to improved evidence collection through our increased use of health information technology (health IT), we are obtaining evidence electronically with increasing frequency. We expect that, over time, the electronic exchange of medical records will become our primary means for obtaining medical evidence. As we increase our use of health IT, the designation of “special arrangement sources” will no longer adequately describe from whom we collect evidence.

DATES: Effective date: This interim final rule is effective [insert date of publication in the FEDERAL REGISTER].

Comment date: To ensure that your comments are considered, we must receive them no later than (insert date 60 days after the date of publication in the FEDERAL REGISTER).

ADDRESSES: You may submit comments by any one of three methods – Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2011-0099 so that we can associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2011-0099. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at

<http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Elksnis, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-966-0497. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We need medical and other evidence to determine whether you are disabled. We need your permission to request your medical records from your medical sources. You can also submit medical evidence to us. We request close to 15 million medical records from almost 500,000 providers to make decisions on approximately 3 million disability claims annually.

Our regulations define the roles and responsibilities of both the State agency and us in obtaining evidence and carrying out the disability determination function. The State agency has the primary responsibility to secure any evidence it needs to make a disability determination. Traditionally, the State agency collects this evidence through a variety of paper-based processes such as mail and fax. In most disability claims, the State agency converts paper records to electronic format and adds them to an electronic folder, which the State agency uses when it makes a disability determination. If we secure evidence from you or other “special arrangement

sources,” we provide that evidence to the State agency for use in making a disability determination.

The United States (U.S.) healthcare system is undergoing a major technological shift, with medical providers adopting electronic health records in place of paper medical records. In 2008, to improve the disability determination process, we started an initiative enabling the electronic exchange of health information rather than using a mostly manual process to request, receive paper records, and then convert them to electronic format. We can now use a fully automated process to obtain electronic medical records nearly instantaneously. Using health IT, we dramatically increase our efficiency in gathering medical evidence. We receive medical evidence via health IT in a matter of minutes or hours, as opposed to days or weeks via traditional channels such as fax and mail.

We currently are in a better position than a State agency to obtain medical evidence via health IT. We developed an application that allows us to request and receive electronic medical records in a fully automated manner through a standards-based electronic transaction. We obtain the evidence via health IT nearly instantaneously, and then we provide it electronically to the State agency that makes the disability determination. This collaborative process allows us to gather medical evidence faster than we can using the traditional paper process and in most cases leads to quicker disability determinations.

With health IT, we increased the frequency at which we, rather than the State agency, request records. As the U.S. healthcare system continues its transition toward health IT, we

expect health IT to become the primary means by which we request and receive medical evidence. We anticipate that our requests for medical evidence will continue to increase and that they will no longer only be to “special arrangement sources.” In recognition of these changes to the U.S. healthcare system and our increasing use of health IT to obtain medical records, we are eliminating the “special arrangement sources” language from our rules. This revision only changes who will obtain evidence; it does not change the State agency’s role in making disability determinations or in requesting evidence through traditional channels, when appropriate.

While we anticipate obtaining increasing amounts of medical records from health IT sources, we also expect that the State agency will continue to obtain evidence, when appropriate. For example, if your medical provider does not use electronic health records and does not participate in health IT, the State agency is better positioned than us to obtain your medical records through traditional channels.

Clarity of These Interim Final Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these interim final rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?

- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will start to use these interim final rules on the date shown under the “Effective Date” section earlier in this preamble.

We also invite public comments on the changes made by the rules. We will consider any relevant comments we receive. If appropriate, we will publish a final rule to respond to any such comments we receive, and to make any changes to the rules based on the comments.

Regulatory Procedures

Justification for Issuing Interim Final Rules Without Notice and Comment

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. § 553 when we develop regulations.¹ Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing interim final rules. The APA provides exceptions to its notice and public comment procedures when an agency finds there is

¹Section 702(a)(5) of the Social Security Act, 42 U.S.C. § 902(a)(5).

good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.²

We find that there is good cause under 5 U.S.C. 553(b)(B) for dispensing with the notice and public comment procedures for these rules. We find that prior public comment is unnecessary because these rules only change our internal administrative procedures that govern the situations in which we, rather than the State agency, request evidence from some medical providers. The changes we are making to our rules do not affect the rights or benefits of the public or make any changes in the standards that the State agency uses to determine disability. Our current rules describe certain circumstances when we secure evidence. These interim final rules reflect that our evidence collection will become more routine than it traditionally has been, in recognition of the advent of health IT. Because we are not making any substantive changes to our current disability determination rules at this time, we find that prior public comment is unnecessary. However, we are inviting public comment on these interim final rules and will consider any substantive comments we receive within 60 days of the publication of these rules

In addition, we find good cause for dispensing with the 30-day delay in the effective date of these rules provided for in 5 U.S.C. § 553(d)(3). For the reasons stated above, we find it unnecessary to delay the effective date of the changes we are making in these interim final rules. Accordingly, we are making them effective upon publication.

Executive Order 12866 as supplemented by Executive Order 13563

²5 U.S.C. 553(b)(B).

We consulted with the Office of Management and Budget (OMB) and determined that these interim final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB did not review the interim final rules.

Regulatory Flexibility Act

We certify that these interim final rules will not have a significant economic impact on a substantial number of small entities because the rules affect our internal procedures for handling claims for individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These interim final rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security--Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR chapter III, parts 404 and 416, as set forth below:

PART 404 – FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950 -)

Subpart Q – [Amended]

1. The authority citation for subpart Q of part 404 continues to read as follows:

AUTHORITY: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

2. Amend § 404.1614 by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 404.1614 Responsibilities for obtaining evidence to make disability determinations.

(a) We or the State agency will secure from the claimant or other sources any evidence the State agency needs to make a disability determination. When we secure the evidence, we will furnish it to the State agency for use in making the disability determination.

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PART 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND
DISABLED

Subpart J— [Amended]

3. The authority citation for subpart J of part 416 continues to read as follows:

AUTHORITY: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

4. Amend § 416.1014 by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 416.1014 Responsibilities for obtaining evidence to make disability determinations.

(a) We or the State agency will secure from the claimant or other sources any evidence the State agency needs to make a disability determination. When we secure the evidence, we will furnish it to the State agency for use in making the disability determination.

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